

DOUGLAS M. OVERMAN

IBLA 81-675

Decided March 25, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management declaring mining claim abandoned and void. M MC 54696.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county recording office alone does not constitute compliance with the recordation requirement of 43 CFR 3833.2-1.

APPEARANCES: Douglas M. Overman, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

By decision of April 9, 1981, the Montana State Office of the Bureau of Land Management (BLM), declared the Tombstone Granite unpatented mining claim, M MC 54696, abandoned and void for failure to file by December 30, 1980, evidence of annual assessment work or a notice of intention to hold the claim as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations in 43 CFR 3833.2.

The Tombstone Granite mining claim was located on December 6, 1979, and recorded with BLM on December 19, 1979. BLM received no filings in 1980. In response to the decision appealed from, appellant filed with BLM on May 14, 1981, additional copies of the location notice and an affidavit of annual assessment work date stamped as filed on December 5, 1980, by the county recorder of Sanders County, Montana.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the implementing regulation, 43 CFR 3833.2-1(c) require that the owner of an unpatented mining claim located after October 21, 1976, shall, on or before December 30 of each calendar year following the year of location, file with BLM a notice of intent to hold the claim or proof of the assessment work performed on the claim during the previous assessment year. Since the claim was located in 1979, the initial evidence of assessment work or notice of intention to hold the claim was due in the BLM office by December 30, 1980, a requirement appellant did not meet.

[2] On May 14, 1981, appellant submitted to BLM a copy of an affidavit of assessment work filed with the recorder of Sanders County, Montana, on December 5, 1980. However, accomplishment of a timely filing in the appropriate county does not relieve the claimant from annually filing a copy of his notice of intent or proof of assessment work with BLM under FLPMA, and the implementing regulations. Major G. Atkins, 60 IBLA 284 (1981). Failure to comply with the statutory requirements governing the recordation of information relative to unpatented mining claims must result in a conclusive finding that the claim has been abandoned. 1/ Robert Wright, 61 IBLA 158 (1982); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

1/ There is an indication in the record that the locators of the claim may have relocated while the appeal has been pending. This decision is without prejudice to any rights which may be established by such relocation.

